FOR THE JUNIORS.

CORPORATIONS—VOTING BY PROXY.—(1) *The Right to Vote by Proxy.*—In the absence of express authority in the charter or by-laws, or in the general law, the members of a corporation must cast their votes in person, and cannot vote by proxy; and this applies as well to business corporations, with shares of a pecuniary value, as to those in which membership is a personal trust or the result of a *delectus personarum: Taylor v. Griswold*, 14 N. J. L. 222 (27 Am. Dec. 33, and note); 1 Morawetz Corp. (2d ed.), 486; 1 Thomp. Corp. 736. And many of the courts hold that such authority cannot be conferred by a by-law: 1 Thomp. Corp. 737.

It is provided by statute in Virginia, that "in a meeting of stockholders, each stockholder may, in person *or by proxy*, give one vote for each share of stock held by him in the same right": Va. Code of 1887, sec. 1116. This language seems clearly to limit the right to members of those corporations which have a *capital stock*, and not to extend the privilege of voting by proxy to the members of those corporations which have no capital stock, and therefore no stockholders.

(2) *Evidence of Proxy's Authority.*—The proxy is usually authorized by a power of attorney from the stockholder whom he is to represent. On this subject the Supreme Court of New Jersey, in *Re St. Lawrence Steamboat Company*, 44 N. J. L. 529, 534, says: "A stockholder who desires to exercise his right to vote on his stock by proxy, is undoubtedly bound to furnish his agent with such written evidence of the latter's right to act for him, as will reasonably insure the inspectors that the agent is acting by the authority of the principal. But the power of attorney need not be in any prescribed form, nor be executed with any prescribed formality. It is sufficient that it appear on its face to confer the requisite authority, and that it be free from all reasonable grounds of suspicion of its genuineness and authenticity; and the court in reviewing the proceedings at an election must be satisfied that the inspectors had reasonable grounds for rejecting the proxy."

In Virginia it is usual for such powers of attorney to be attested by a witness, but they are usually accepted as sufficient even when unattested, unless there be circumstances of suspicion sufficient to cast upon the alleged proxy the burden of proving the genuineness of the signature, which he may do by any competent evidence.

CONDITIONAL SALE OF PERSONAL PROPERTY.—This is a species of sale which has become very common in the United States, and which has proved so hurtful in its consequences to creditors and purchasers that in a number of States (including Virginia) it has been found necessary to regulate it by statute. The sale is on the express condition that *title shall remain in the seller until the buyer makes payment*, and this although delivery is made to the buyer, and a term of credit given him; as where the seller takes the buyer's note for the price, payable, say in six months, and the buyer takes possession of the property, e. g. a horse or cow, or a piano or sewing machine. There is no objection to the transaction as between seller and buyer; but suppose the possession of the buyer and his apparent title give him a fictitious credit; or suppose the buyer sells the chattel to

a purchaser for value without notice, shall the seller's title be upheld as against the buyer's creditors, or against an innocent purchaser from the buyer? It is held in nearly all of the States, in the absence of statute, that as the buyer has never received any title to the chattel, he can pass none, even to an innocent sub-buyer; and the case is declared analogous to a purchaser from a borrower or bailee, or from a thief or finder, where it is settled that the innocent buyer (except of negotiable paper) cannot retain the chattel against the paramount right of the true owner.

In *Harkness v. Russell*, 118 U. S. 663, there is an elaborate examination of all the authorities by Bradley J., and the doctrine above stated is fully approved; and it is said that such conditional sales are held to be valid, not only between the parties, but also against the creditors of the buyer and purchasers from him, in Massachusetts, Connecticut, New York, Maine, New Hampshire, Vermont and New Jersey. See for recent cases upholding such sales, *Cole v. Berry*, 42 New Jersey Law 308 (36 Am. Rep. 511); *Goodell v. Fairbrother*, 12 R. I. 233 (34 Am. Rep. 631); *McComb v. Donald*, 86 Va. 903; *Summer v. Woods*, 67 Ala. 139 (42 Am. Rep. 104). In the last case it is said by Somerville J.: "We consider it settled by an overwhelming preponderance of the decisions that where there is an express stipulation in the sale of personal property that the property shall not be the vendee's until the price is paid, the title does not pass, the transaction being a mere conditional sale. And that a *bona fide* purchaser of such property acquires only the conditional title of his vendor, and cannot be protected against recovery on suit brought by the original vendor and owner of the legal title. The fact that the first purchaser, or second vendor, was at the time of the sale in possession of the property does not change the principle. It is a question of right and not notice, and the maxim of *caveat emptor* applies with as much force as in cases of ordinary bailments." Citing cases from New York, Vermont, Massachusetts, Connecticut, Tennessee, New Hampshire, Iowa, Mississippi, Missouri, Georgia and Arkansas. And see *Singer Manufacturing Co. v. Graham*, 8 Oregon 17 (34 Am. Rep. 573); *Velsian v. Lewis*, 15 Oregon 539 (3 Am. St. Rep. 184, and extended note).

But in Pennsylvania, Illinois, Kentucky and Maryland a sale on condition that no title shall pass to the buyer until payment, though sustained between the parties, is void as against the buyer's creditors and *bona fide* purchasers from him. See *Stadtfield v. Huntsman*, 92 Pa. St. 53 (37 Am. Rep. 661); *Peek v. Heim*, 127 Pa. St. 500 (14 Am. St. R. 865); *Farquhar v. McAlery*, 142 Pa. St. 233 24 Am. St. R. 497); *Murch v. Wright*, 46 Ill. 487 (65 Am. Dec. 455); *Vaugh v. Hopson*, 10 Bush. (Ky.) 335; *Lincoln v. Quynn*, 68 Md. 299 (6 Am. St. Rep. 446). And in some of the States, as we have seen, such conditional sales are by statute required to be in writing and recorded, or else the condition reserving title is void as to creditors of, and purchasers for value without notice from, the vendee. Statute provisions on this subject have been enacted in Maine, Vermont, Iowa, Virginia and West Virginia. See for the Virginia Statute, Code, sec. 2462, amended by Public Acts 1889–90, p. 108, ch. 135. For a case decided under this statute, see *Hash v. Lore*, 88 Va. 716. For the West Virginia statute, see Code West Virginia, ch. 74, sec. 3. For case under this statute, see *Baldwin v. Van Wagner*, 33 West Virginia, 293. And see on whole subject 2 Sch. Pers. Prop. (2d ed.), sec. 300, and note 1.

The provisions of the Virginia statute with respect to recordation of such contracts are peculiar in two respects: the writing itself is not recorded, but (save in certain enumerated cases) a mere memorandum thereof is docketed; and no authentication, official or by witnesses, is essential. See Acts 1893-4, p. 422, altering the contrary rule with respect to authentication, as established in *Callahan v. Young*, 90 Va. 574.